

Senior Water Rights Coalition PO Box 7325, Helena, MT 59604

My name is Krista Lee Evans and I am opposing Senate Bill 19 on behalf of the Senior Water Rights Coalition and the Association of Gallatin Agricultural Irrigators. Both groups are comprised of entities that hold water rights and want to protect the property rights associated with those water rights.

First, let's talk about the basic premise of Senate Bill 19. SB 19 simply defines combined appropriation. It appears to be a simple bill that provides a simple definition. This is not the case. The implications of the definition of combined appropriation are serious and long lasting. The term "combined appropriation" is what determines whether or not a concentrated use of exempt wells must go through the permitting process or is exempt from permitting regardless of the impact to the property rights held by senior water right holders.

I will briefly outline a our biggest concerns with SB 19

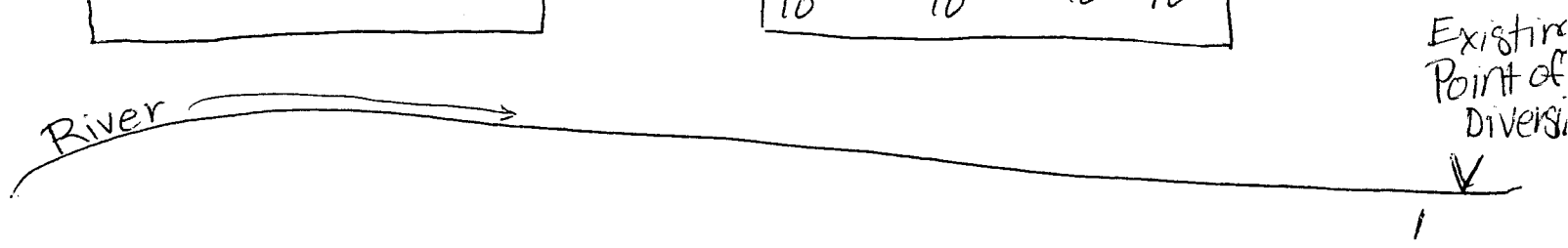
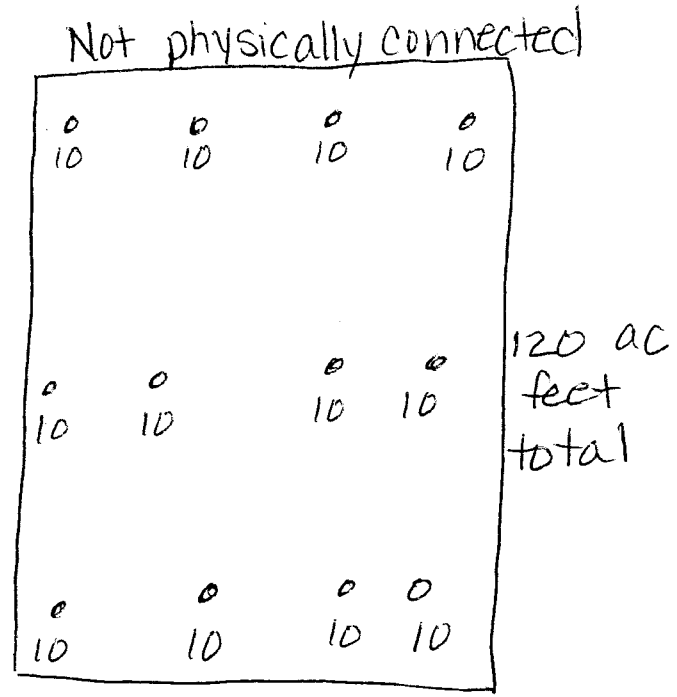
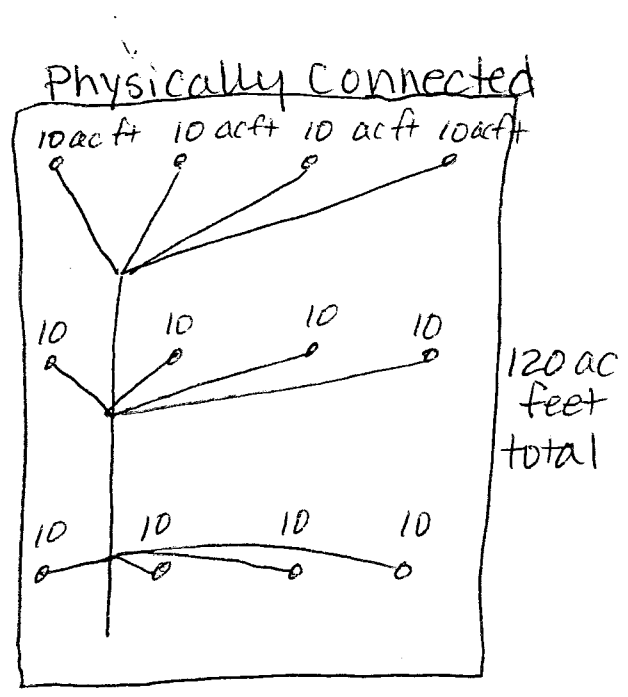
- (1) We are not opposed to exempt wells and believe that they serve a vital need in Montana. We have stated continuously that exempt wells should not be eliminated. Our concern is those instances where entities use the exempt well process to end run the permitting process – most specifically in areas or projects where there is a concentrated use
- (2) SrWRC has always stated that we are not opposed to in-house use of water from exempt wells– especially when the house has onsite septic. Those with offsite waste treatment are 100% consumptive and more concerning.
- (3) There are property rights guaranteed by the MT Constitution that are associated with water rights...there are also property rights associated with the right to develop your property. The only mechanism for balancing these competing property right interests is the water right permitting process.
- (4) We are not opposed to the legislature defining combined appropriation rather than DNRC adopting rules to provide the definition...HOWEVERthe definition in SB 19 is so narrow that it tilts the balance of property rights completely away from the property rights associated with water rights. The definition in SB 19 is so onerous that we would rather work with the DNRC and other interested parties in the rulemaking process than be faced with the significant implications of SB 19.
- (5) Our issue is that the definition that is provided in SB 19 is too narrow. We believe that even if the wells are not "physically connected" a concentrated use of exempt wells resulting from the same project should be analyzed through the permitting process. The aquifer and associated surface water bodies don't care if there is a pipe or ditch or some other connection of the wells. What matters is that the water that is pulled from the system, in certain basins, is likely affecting senior surface water rights. The only mechanism to determine if there is a relationship and an adverse effect is the permitting process. The definition in SB 19 provides an end run to the permitting process that adversely affects senior water right holders and eliminate our ability to protect our property rights.
- (6) Equity in permitting is also important to consider. If an irrigator wants to irrigate 100 acres of alfalfa they must go through the permitting process. If a subdivision wants to irrigate 100 acres

of Kentucky Bluegrass there is no restriction. Bottom line is that irrigation is irrigation . . . both types consume water and one is being treated completely different than the other.

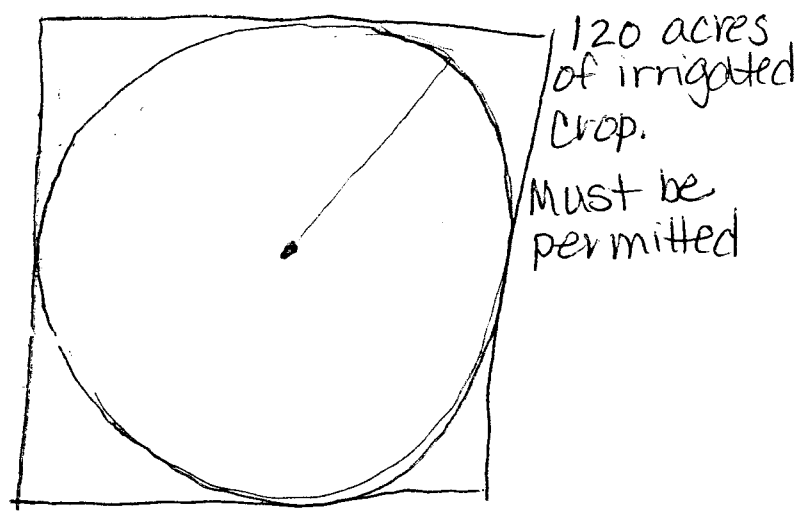
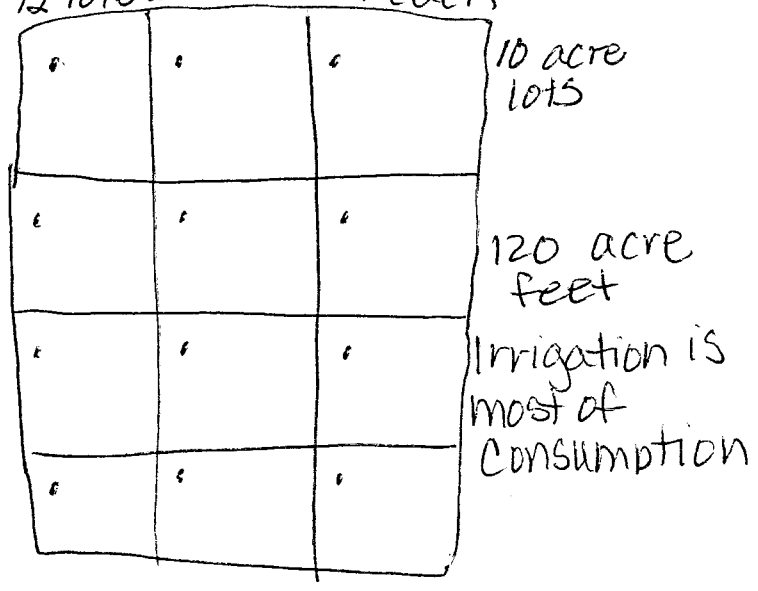
Please protect over 100 years of water law and **Table SB 19** so that a more reasonable and equitable definition of combined appropriation can be developed. SB 19 is clearly in conflict with the prior appropriation doctrine and our concern is that in the event this statutory definition were to be challenged we could lose ALL exempt wells – whether they are a combined appropriation or not. That determination would not be good for any water users let alone economic development in Montana.

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Impact to surface water and the aquifer is the same whether the wells are physically connected or not. SBIA doesn't consider the scenario where wells are not physically connected.



12 exempt wells - no permit
12 lots with 10 ac ft each



River →

* No difference in the use (irrigation) and no difference in the amount. One is permitted and one isn't.